



Home Office

Educational Testing Service (ETS): casework instructions

Version 4.0

Contents

Contents.....	2
About this guidance.....	3
Contacts	3
Publication	3
Changes from last version of this guidance	3
Purpose.....	4
Background.....	5
Case consideration.....	6
Identifying those affected.....	6
Applications for leave to remain.....	7
Applications made on the basis of Article 8.....	7
Applications for indefinite leave to remain (ILR) made under long residence.....	7
Certification as clearly unfounded.....	7
Applications made under a points-based system (PBS) route or non-human rights claims	8
Minded to refuse	8
Applications for Naturalisation	8
Implementing appeal findings.....	9
Actions by Immigration Enforcement in ETS Cases	10

About this guidance

This instruction provides guidance on how to manage cases affected by the Educational Testing Services (ETS) English language issues, also referred to as 'Operation Agantuk' cases.

Contacts

If you have any questions about the guidance, you must speak to your line manager, technical specialist or senior caseworker. Further advice on ETS cases can be sought from Appeals policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **4.0**
- published for Home Office staff on **18 November 2020**

Changes from last version of this guidance

- updated implementing appeal findings section

Related content

[Contents](#)

Purpose

To give effect to the [Written Ministerial Statement](#) made on 23 July 2019. The key points are:

- it is necessary to balance ‘a belief that deception was committed some years ago against other factors that would normally lead to leave being granted, especially where children are involved’
- it is necessary to ‘update operational guidance to ensure no further action is taken in cases where there is no evidence an ETS certificate was used in an immigration application’

Related content

[Contents](#)

Background

This section provides you with a general background to the investigation into fraud in the English Language Testing system, in particular alleged cheating in the Test of English for International Communication (TOEIC) certificates offered by Educational Testing Services (ETS).

Official - sensitive: start of section

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In 2014, the Home Office was made aware of an investigation by the BBC in which undercover reporters gained access to several test centres across the UK where ETS English language tests were being undertaken by people subject to immigration control who required proof of their English language skills to make an application for leave to remain. The BBC investigation revealed, using covert recording, significant fraud in the test processes.

It was revealed that some TOEIC tests set by ETS, were not sat by the actual candidate but by 'proxy' test takers.

The abuse included:

- the use of 'proxies' to undertake speaking and listening tests on behalf of the candidates
- the provision of correct answers for those sitting written tests

Home Office investigations revealed systemic cheating, indicative of an extremely serious, large scale, organised fraud and a significant attempt to undermine immigration control.

ETS undertook analysis of speaking tests to identify where tests were taken by a substitute (or proxy) test taker.

The analysed results have been split into 2 areas:

- **invalid:** where the analysis indicated that cheating in the test took place
- **questionable:** where analysis has not proven cheating but where concerns are deemed sufficient to withdraw the test result

Related content

[Contents](#)

Case consideration

This section tells you what processes to follow when considering cases affected by the Educational Testing Services (ETS) English language issues.

Identifying those affected

Cases will usually be classed as either questionable or invalid.

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Where a test certificate has been classed as **invalid**, ETS have confirmed through voice-matching analysis that cheating is likely to have taken place.

Where an applicant has a **questionable** ETS flag, it is important to establish what was done at the time the issue was identified to determine whether the person cheated in the test or not. The usual practice was to offer the person the opportunity to retake the test, or a credibility interview would have been conducted. If there is clear evidence that either process was followed and there are sustainable findings that the person was not credible, or did not re-take the test, then the allegation of deception should be maintained. If there is evidence that the person was credible (or passed a further test) no further action should be taken. If there is no evidence of any attempt to interview the person at the time the allegation was made, it is not appropriate to conduct an interview [or offer a re-test] now and the allegation of deception should not be maintained.

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In line with the written ministerial statement, where a fraudulent ETS certificate was obtained but was not relied upon in an immigration application, Home Office systems must be updated, and a note made that no further action is to be taken.

Where a certificate was used in support of an application and you are satisfied that deception was practised in obtaining the ETS certificate this guidance must be followed.

Applications for leave to remain

Applications made on the basis of Article 8

You must follow the case working instructions Family and Private Life Guidance. The use of the invalid Test of English for International Communications (TOEIC) certificate in a previous application will be a relevant consideration with respect to S-LTR.2.2. However, as noted in the written ministerial statement that is not a mandatory ground to refuse an application and it must be balanced against all relevant aspects of the application.

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Applications for indefinite leave to remain (ILR) made under long residence

Confirmed use of an invalid certificate should not be raised as a reason for refusal with reference to the General Grounds for Refusal (GGFR). GGFR in circumstances where a grant of leave to remain has previously been made in spite of the ETS TOEIC issue, unless any new information has come to light since the previous grant of leave.

Certification as clearly unfounded

Where a family life application or human rights claim is received, it is only possible to certify the claim under section 94 of the Nationality, Immigration and Asylum Act 2002, where we are relying on deception, where there is strong evidence of

deception, such that nobody could doubt that deception was practised. An example of this might be where there is a criminal conviction based on the deception or there has been an independent finding of deception by a court or Tribunal.

If the threshold above has not been met, it is still possible to certify the human rights claim as clearly unfounded. However, it will only be possible to do this by making it clear in the certification letter that the ETS deception has not been relied upon in certifying the claim and that the claim is clearly unfounded, irrespective of the deception.

If a decision is taken to refuse a human right based claim and certify it as clearly unfounded and the decision makes no reference to deception, then it will not be possible to rely on ETS deception at a future date if the certificate is quashed.

Further guidance on the use of certification can be found under Clearly unfounded claims: certification under section 94.

Applications made under a points-based system (PBS) route or non-human rights claims

Confirmed use of an invalid certificate should be considered under Para 322 (1A), of the Immigration Rules and you must follow the instructions in the General Grounds for Refusal guidance.

Minded to refuse

Where an application falls for refusal on the basis that an invalid TOEIC (ETS) certificate has been used to support a previous application for leave to remain, then you should follow the 'minded to refuse' process. Guidance can be found in the False representation guidance.

The only exception is where the ETS deception was the basis for refusal of the previous application and was not challenged, or the applicant has previously had an appeal or substantive Judicial Review hearing in which the issue of deception was considered and court or Tribunal found that there was deception.

Applications for Naturalisation

Where there is evidence that a person has used deception in obtaining an ETS certificate, this should be considered relevant to the consideration of good character. Follow the instructions in the Nationality policy: good-character guidance.

Related content

[Contents](#)

Implementing appeal findings

If an individual who has used an invalid Test of English for International Communications (TOEIC) certificate in support of an application wins an appeal on Article 8 grounds, then the grant of leave will depend upon whether the relevant rules are met. Usually, the individual will be on the path to 5-year settlement if the rules are found to be met and the 10 -year route if the appeal succeeds on the basis of the exceptions in Appendix FM.

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If the appeal is dismissed on human rights grounds but a finding is made by the Tribunal that the appellant did not obtain the TOEIC certificate by deception, you will need to give effect to that finding by granting six months leave outside the rules.

This is to enable the appellant to make any application they want to make or to leave the UK.

Related content

[Contents](#)

Actions by Immigration Enforcement in ETS Cases

The Educational Testing Services (ETS) deception allegation is not of itself a barrier to removal as it does not give rise to a right of appeal in country where one would not otherwise exist. Where the deception allegation was challenged in an appeal or Judicial Review, but the appellant was found by the court to have used deception, in the absence of further evidence then the allegation can be maintained. If a person otherwise liable to removal does not dispute the allegation of deception when their current circumstances are considered, then there is no need to consider the ETS allegation as an issue distinct from any other representations made in response to the RED 2 notice.

Where we have alleged deception in obtaining an ETS certificate and a judicial review or an appeal that have been unsuccessful then the finding of deception should be maintained unless the court or Tribunal found that there was no deception.

In other cases, caseworkers in Returns Preparation must consider the case and decide whether to grant leave to remain on family and private life grounds. As is normal procedure, Immigration Enforcement (IE) will do a current circumstances interview prior to removal. Where a human rights claim is raised then a RED 3 notice must be served. Where the human rights claim is being raised for the first time, it must be considered in line with the guidance in [Applications made on the basis of Article 8 Appendix FM](#).

Where the human rights claim is a further submission it must be considered in line with the Further submissions guidance.

Related content

[Contents](#)

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[Contents](#)